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**U.S. Citizenship
and Immigration
Services**

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FILE:

[REDACTED]
[EAC 02 048 52848]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 06 2005

IN RE:

Applicant: [REDACTED]

APPLICATION:

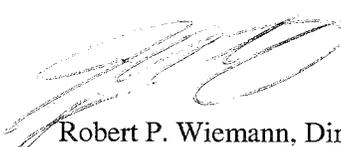
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The director determined that the applicant had been convicted of two or more misdemeanors, and subsequently denied the TPS application on May 3, 2004.

On appeal, the applicant asserts that his criminal charges were reduced and that the incidents occurred years ago. The applicant also asserts his claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following offenses under the name [REDACTED]

- (1) On November 12, 1998, the applicant was convicted of one count of menacing in the second degree, stemming from an arrest on November 11, 1998 in New York (Docket [REDACTED])
- (2) On March 27, 2001, the applicant was convicted of one count of operating a motor vehicle while under the influence of drugs or alcohol, stemming from an arrest on December 1, 2000 in New York (Docket [REDACTED]) and,
- (3) On March 27, 2001, the applicant was convicted of one count of disorderly conduct, stemming from an arrest on December 1, 2000, (Docket [REDACTED])

On appeal, the applicant asserts that the criminal charges were reduced and that the incidents occurred years ago.

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Although the applicant was convicted of lesser-included offenses beginning in 1998, (Nos. 1, 2, and 3 above) they are still viable misdemeanor convictions

which make him ineligible for TPS. Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his continuous residency in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for these reasons.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.